IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 805 of 1999

in

SPECIAL CIVIL APPLICATIONNo 637 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NATHIBEN VIRA

Versus

STATE OF GUJARAT

Appearance:

1. LETTERS PATENT APPEAL No. 805 of 1999

MR KM PATEL for Appellant No. 1

MR PREMAL JOSHI, AGP, for Respondents No. 1-3

MR KS NANAVATI with MR MIHIR H JOSHI for Respondent No. 4

CORAM : MR.JUSTICE A.R.DAVE
and

MR.JUSTICE D.P.BUCH

Date of decision: 08/11/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

In this appeal the validity of the judgment delivered by the learned single Judge in Special Civil Application No. 637 of 1999 has been challenged.

2. The facts giving rise to the present appeal, in a nutshell, are as under :

3. Late Harijan Vira Jetha was granted 10 acres and 14 gunthas of land situated at Village Navagam, Taluka Lalpur in 1976 by the government authorities on certain conditions. One of the important conditions incorporated in the order of grant was that the land was to be made cultivable and late Harijan Vira Jetha should start cultivating the land within two years from the date of the grant. Late Harijan Vira Jetha expired and, therefore, the land granted in his favour was mutated in the name of the appellant, who is the widow of late Harijan Vira Jetha. As late Harijan Vira Jetha or his family members did not cultivate the land in question as per the condition incorporated in the order of grant, the Deputy Collector, Jamnagar issued notice to the appellant calling upon her to show cause as to why the land should not be forfeited in favour of the government for committing breach of the condition on which the land was granted. In pursuance of the said notice, the appellant had filed her reply and had submitted that late Harijan Vira Jetha had cultivated the land after the land was granted to him but thereafter on account of famine, neither the appellant nor late Harijan Vira Jetha could cultivate the land. It was further submitted to the Deputy Collector that the land would be cultivated by the appellant as cultivation was possible on account of good monsoon. Upon perusal of the relevant revenue record and after considering the reply submitted by the appellant, the Deputy Collector came to the conclusion that the appellant and late Harijan Vira Jetha had committed breach of the condition on which the land was granted by the government authorities by not cultivating the same and, therefore, the land was forfeited in favour of the government. It was also noted by him that upon death of late Harijan Vira Jetha the appellant had left village Navagam and had settled in village Fatana of Porbandar Taluka. Thus, the land was not cultivated by anybody. The Deputy Collector had observed in his order that by

not cultivating the land the appellant and her husband late Harijan Vira Jetha had not only committed breach of the condition on which the land was granted, but also frustrated the object with which the land was granted. By making such observations, the Deputy Collector ultimately passed an order dated 10.8.1992 forfeiting the land granted to late Harijan Vira Jetha.

4. The order of the Deputy Collector was challenged by the appellant before the Collector, Jamnagar by filing an appeal. It was submitted on behalf of the appellant before the Collector, Jamnagar, that late Harijan Vira Jetha was suffering from tuberculosis and he had to be hospitalised for the purpose of treatment. Late Harijan Vira Jetha could not cultivate the land on account of his sickness and as the appellant belonged to a backward class, she also could not take due care of the land by cultivating the same. It was further submitted that the land had been developed by spending substantial amount and for some time it was also cultivated. It was furthers submitted that because of famine the appellant could not cultivate the land and it was submitted before the Collector that the land would be cultivated regularly. A request was also made to the Collector for regrant of the land.

5. After considering the record of the case and the submissions made before him, the Collector quashed and set aside the order dated 10.8.92 passed by the Deputy Collector and the Collector came to the conclusion that the confiscation of the land in favour of the government was very harsh. The Collector considered the fact that the appellant belonged to a backward class and she was also economically not sound. He also considered the fact that policy of the government was to regrant the land and by confiscation of the land, the purpose with which the land was granted was not being fulfilled. The appeal was filed after about 5 years, but the Collector also came to the conclusion that there was a justifiable reason for which the delay was caused and therefore he had condoned the delay. The Collector thus set aside the order of the Deputy Collector and impliedly directed the authorities to regrant the land in question to the appellant.

6. Being aggrieved by the order dated 27.3.1998 passed by the Collector, the State of Gujarat preferred a revision application under the provisions of sec. 211 of the Bombay Land Revenue Code. The said revision application was heard by the Addl. Chief Secretary (Appeals), Revenue Department, State of Gujarat. It was submitted before the revisional authority by the

representative of the state that the order of the Collector was bad in law because the Collector did not consider the fact that the land was required for industrial purpose and a request for grant of the land was pending with the Revenue Department of the State of Gujarat. It was also submitted that in pursuance of the order dated 10.8.92 passed by the Deputy Collector, Jamnagar, Entry No. 1615 dated 23.2.1993 had been passed whereby the land was entered in the name of the government and against the said entry no objection was raised by the appellant. Moreover, there was no justifiable reason for condoning the delay caused in filing the appeal before the Collector and yet the Collector had condoned the appeal. On the other side, it was submitted on behalf of the appellant that the order of the Collector was just and proper because late Harijan Vira Jetha had expired as he was suffering from tuberculosis and his wife, the appellant, was unable to take care of the land as she had to look after her husband. It was also submitted that the appellant was not having any other source of income and therefore the order of the Collector should not be interfered with. It was further submitted that the order passed by the Collector with regard to regrant of the land was also in accordance with the policy laid down by the State of Gujarat.

7. After hearing the concerned parties and upon perusal of the relevant record, the revisional authority came to the conclusion that the order of the Deputy Collector, Jamnagar dated 10.8.92 was just and proper and the order dated 27.3.98 passed by the Collector Jamnagar was unjust and improper and therefore the order passed by the Collector in appeal was quashed and set aside because neither the appellant nor her husband, late Harijan Vira Jetha, cultivated the land in question as per the conditions incorporated in the order of grant. The revisional authority observed in its order that upon perusal of the revenue record it was very clear that the land in question had not been cultivated and the condition on which the land was granted had not been complied with. It was also found that the appellant was staying at a different place and therefore the land was not cultivated. The Collector should not have condoned the delay caused in filing the appeal as there was no justifiable reason for condonation of the delay. Moreover, the Collector was aware of the fact that the land had already been mutated in the name of the government and the land was also required for industrial purpose. In view of the above fact and due to the fact that the appellant did not cultivate the land, there was

no reason to regrant the land to the appellant. It was not believed that the appellant had cultivated the land after 1981. It was also found that even with scanty rains certain crops can be cultivated. It appeared to the revisional authority that no effort of whatsoever type was made by the appellant to cultivate the land and therefore the order passed by the Collector, Jamnagar dated 27.3.98 was quashed and set aside and the order of the Deputy Collector, Jamnagar dated 10.8.92 was confirmed by the appellate authority by an order dated 31.8.98.

8. Being aggrieved by the order passed in revision application dated 31.8.98, Special Civil Application No. 637/99 was filed by the appellant and the said petition was rejected by the learned single Judged on 7.5.1999.

9. Learned Advocate Shri A.J. Patel appearing with learned advocate Shri K.M. Patel has submitted before this court that the order of the Deputy Collector was bad in law for the reason that the Deputy Collector ought to have given a chance to the appellant by regranting the land to her as the appellant belonged to a backward class. Looking to the circumstances of the family and especially in view of the fact that late Harijan Vira Jetha had passed away on account of his sickness and as the appellant could not cultivate the land because of her family circumstances, the Deputy Collector should not have forfeited the land but should have regranted the land as the Collector, Jamnagar did. It has been submitted by learned advocate Shri A.J. Patel that it was not open to the Deputy Collector to invoke the provisions of sec. 79A of the Code and take possession of the land in question. As a matter of fact, after cancellation of the grant, another separate order for taking possession of the land in question should have been passed. It has also been submitted that in pursuance of the policy of the government, the land should have been regranted to the appellant upon payment of Re. 1.

10. He has also submitted on behalf of the appellant that the Collector, Jamnagar had rightly considered all relevant factors and had regranted the land to the appellant and the said order of the Collector should not have been interfered with by the revisional authority. It has been submitted by him that simply because a request was made for grant of the land in question by somebody, the land should not have been forfeited in favour of the government.

11. On the other hand, learned AGP Shri Premal Joshi appearing for the government authorities has submitted that as the appellant or late Harijan Vira Jetha had not cultivated the land as per the conditions on which the land was granted, it is very clear that the appellant was not interested in cultivating the land. It has been submitted by him that in pursuance of a policy of the government, the land in question was granted to late Harihan Vira Jetha at a throwaway price so that the land can be cultivated and agricultural produce in the country can be increased. As the said object of the government had been frustrated because of keeping the land fallow, according to him, the Deputy Collector had rightly forfeited the land in favour of the government by an order dated 10.8.1992. It has been also submitted by the learned AGP that the Collector, Jamnagar committed a mistake by regranting the land to the appellant. It has been submitted by him that had the appellant been really a needy person, she would not have kept the land fallow. He has also drawn our attention to the revenue record to show that the land in question was in fact not cultivated after 1981.

12. Upon hearing the learned advocates and upon perusal of the record pertaining to the case, we are of the view that the impugned order of the learned single Judge confirming the order passed by the Addl. Chief Secretary (Appeals) is just and proper. It is also pertinent to note that writ jurisdiction is a discretionary jurisdiction and this court may not exercise the said jurisdiction in favour of a person who has not come with clean hands or who has committed some illegality or has committed breach of statutory or contractual provisions. In this case, the appellant did not cultivate the land in question and committed breach of the condition on which the land was granted and, therefore, the appellant did not deserve any sympathy. In our opinion, looking to the above facts, discretionary jurisdiction of this court was rightly not exercised in favour of the appellant by the learned single Judge.

13. Looking to the admitted fact that the land had not been cultivated by the appellant after 1981 and till the matter was finally decided in revision application by the government, we do not see any reason for the revenue authorities to take any lenient view in favour of the appellant for regrant of the land in question. Looking to the conduct of the appellant, in our opinion, this court rightly did not exercise its jurisdiction in favour of the appellant because the appellant never cultivated the land in question. This denotes that the appellant

was not a needy person. In our opinion, the order of the Deputy Collector dated 10.8.92 cannot be faulted with.

14. The submission with regard to validity of the order of the Deputy Collector at this stage need not be looked into especially when the appellant has already been dispossessed of the land in question. It would be absolutely unjust to ask the respondent government authorities to hand over possession of the land in question to the appellant after a decade or more. It is pertinent to note that the purpose with which the land was granted has not been fulfilled. The appellant was not staying at the place where the land is situated. Had she been a needy person, she would not have migrated to Fatana but she would have remained at Navagam, the village near which the land was granted to late Harijan Vira Jetha. The revisional authority has rightly observed that even with scanty rains certain corps can be cultivated. Upon perusal of the revenue record, the revisional authority as well as the Deputy Collector, Jamnagar came to the conclusion that there was no cultivation on the land in question after 1981. The said fact denotes that the appellant never bothered to cultivate the land but with some oblique motive challenged the order of the Deputy Collector after several years.

15. For the abovestated reasons the learned single Judge rightly upheld the order passed by the revisional authority by rejecting the petition.

16. In the circumstances, we do not find any substance in this appeal and the appeal is dismissed with no order as to costs.

(A.R. Dave, J.)

(D.P. Buch, J.)

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